



REPUBLIC OF KENYA



NGEC
National Gender and
Equality Commission

Report on the Benchmarking Visit to the Uganda Equal Opportunities Commission





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Sincere compliments go to the Chairperson Dr. Joyce Mutinda, Vice Chairperson Dr. Murithi Chomba, Commissioner Dr. Florence Wachira and Hon. Commissioner Priscilla Nyokabi for being part of the delegation and offering valuable learning insights for the Commission. Lastly I salute the Head of Public Communications Mr. Daniel Waitere for providing professional technical assistance during the visit and documenting this report.

Betty Sungura, EBS, MBS
COMMISSION SECRETARY/CEO

LIST OF ACRONYMS

BCC	—	Budget Call Circular
EOC	—	Equal Opportunities Commission
GEB	—	Gender and Equity Budgeting
GoU	—	Government of Uganda
GRB	—	Gender Responsive Budgeting
LGs	—	Local Governments
MDAs	—	Ministries Departments and Agencies
MoFPED	—	Ministry of Finance, Planning and Economic Development
NGEC	—	National Gender and Equality Commission
PBB	—	Programme Based Budgeting
PFMA	—	Public Finance Management Act

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INTRODUCTION

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Act. No. 15 of 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya, 2010. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with focus on special interest groups, which include: women, children, youth, persons with disabilities (PWDs), older members of society, minorities and marginalized groups.

BACKGROUND

In 2014, the Commission facilitated the Kenya government to adopt gender-responsive budgeting (GRB) as a strategy for promoting gender equality and inclusion at both the national and county level. The Commission spearheaded development of GRB guidelines and in consultation with key national actors such as the National Treasury, the Ministry of Planning and Devolution and the county governments developed capacities of policy and technical arms of government to implement the GRB guidelines¹.

The guidelines were meant to assist in the mainstreaming of gender considerations in the planning and budget formulation processes, as well as in the monitoring and evaluation of the implementation of the same. The guidelines would also assist technical officers and policy arm of government in understanding what the concept of 'Mainstreaming in Planning' entails, as well as enabling them and stakeholders to track the outcomes of their efforts. The ultimate goal was to make sure the budgeting process in Kenya is equally responsive to needs and priorities of women, men, girls and boys, respectively. NGEC envisaged that the development and application of the guidelines would accelerate the transformation and elimination of structural inequalities between the sexes.

GENDER RESPONSIVE BUDGETING

The concept of 'gender responsive budgeting' (GRB) is based on a number of critical premises: Government budgets are not just a technical compilation of incomes and expenditures. It is the most important policy statement made by the Executive in the course of the year. Budgets are the strongest expression of a government's political priorities and commitment; they constitute a declaration of the government's fiscal, financial and economic objectives and reflect its social and economic priorities. Budgets are therefore not gender-neutral in impact. They have the potential to either increase or reduce the burdens and/or vulnerabilities of different social groups, or to improve their capacities and capabilities. They can also encourage positive and/or negative behavioral changes.

¹(National Gender and Equality Commission, 2014)

LEGAL AND POLICY FRAMEWORK GUIDING GRB

The Constitution of Kenya provides the basis upon which GRB is anchored. In the preamble it recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. Article 21(3) on the Bill of Rights specifies that: “all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, and youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.”

Article 27, further expands on equality to include that: Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

On public financial management specifically, Article 201 in Chapter Twelve of the Constitution provides five principles that shall guide the rationalization of public resources. It states that the public finance system shall promote an equitable society. In particular: “Expenditure shall promote equitable development of the county including by making special provision for marginalized groups and areas².”

IMPLEMENTATION OF GENDER RESPONSIVE BUDGETING IN KENYA

The Budget and Appropriations Committee Report on the Estimates of Revenue and Expenditure for 2016/2017 and The Medium Term noted that even though Kenya had progressed greatly on gender issues following the 2010 Constitution, the country was still far in integrating gender specific issues during budgeting, implementation and monitoring. The report observed that with core institutions such as the National Gender and Equality Commission and the Ministry of Gender and the UN Women, Kenya should be ready to quickly integrate GRB in all its fiscal policy and budget processes.

“Given recent progress in PBB, alongside ongoing social orientation of the budget in line with the Constitution, through a few more steps Kenya is primed to easily join Morocco and Rwanda in Africa in integrating the concept of Gender Responsive Budgeting in its programmes, budgets and financing. In this regard, it is suggested that future budgets include specific gender sensitive programmes, sub-programmes, and associated performance information”. Said the report.

²(Republic of Kenya, 2010)

BENCHMARKING VISIT

In order to establish the effectiveness and outcomes of gender responsive budgeting, the National Gender and Equality Commission undertook a benchmarking exercise to the Equal Opportunities Commission (EOC) of the Republic of Uganda. The purpose of the benchmarking exercise was to: -

1. Assess the extent of EOC's contribution to raising awareness and capacity-building about gender budgets;
2. To extract good practices and inform NGEN's strategic guidance for future programming on GRB and
3. To consult on appropriate policy and legal reforms for making GRB accountable by National and County Governments.

Additionally, the Commission was interested in learning how the EOC handles and processes complaints by exercising its powers of a Court to conduct tribunals and resolve issues of discrimination. The Commission also sought to strengthen and establish collaboration with equality and human rights institutions in the region with a view of establishing a regional caucus which would in turn articulate joint resolutions at international fora.

BENCHMARKING VISIT



NGEC Commissioners and CEO and their Ugandan Counterparts Pose for a Photo Outside EOC's Headquarters in Kampala

The benchmarking visit was attended by the following persons at the EOC headquarters in Luthuli Close, Bugolobi, Kampala Uganda.

1. Dr. Joyce M. Mutinda (PhD)- Chairperson
2. Dr. Joel Murithi Chomba (PhD)- Vice Chairperson
3. Dr. Florence Wachira (PhD) – Commissioner
4. Hon. Priscilla Nyokabi- Commissioner
5. Betty S. Nyabuto- Commission Secretary/CEO
6. Daniel Waitere- Head of Public Communications.

ABOUT EQUAL OPPORTUNITIES COMMISSION

The Equal Opportunities Commission is a statutory body established by an Act of Parliament to effectuate Article 32(3) and Article 32 (4) of the Constitution of Uganda. The Equal Opportunities Commission is mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them, and to provide for other related matters³.

FUNCTIONS OF THE EOC

1. The functions of the Commission are to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of:
 1. Organs of state at all levels;
 2. Statutory bodies and agencies;
 3. Public bodies and authorities;
 4. Private businesses and enterprises;
 5. Non-governmental organizations, and
 6. Social and cultural communities, are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.
2. Without prejudice to the generality of subsection (1) the Commission may:
 1. Investigate or inquire into, on its own initiative or on a complaint made by any person or group of persons, any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities.
 2. Examine any law, proposed law, policy, culture, tradition, usage, custom or plan which is likely to have effect of nullifying or impairing equal opportunities to persons in employment or enjoyment of human rights.

³(Equal Opportunities Commission Uganda, 2019)

3. Develop, conduct and manage information and educational programs to facilitate and promote public awareness, understanding and acceptance of equal opportunities and treatment in employment, occupation, education and all social services;
4. Undertake research and organize, coordinate and promote workshops, seminars, conferences and public discussions on equal opportunities and treatment in employment, education, social services or social and cultural construct of roles and responsibilities in society;
5. Consider such recommendations, suggestions and requests concerning the promotion of equal opportunities as it may receive from any source;
6. Prepare and publish, guidelines for implementation of equal opportunities and the avoidance of acts, practices, usage, customs, tradition or cultures that undermine equal opportunities;
7. Monitor the compliance, in Uganda, with the provisions of international and regional conventions, treaties and other instruments to which Uganda is a party, that relate to or are relevant to the functions and objects of the Commission;
8. Perform such other functions that are incidental or conducive to the above functions.

2. The Commission may rectify, settle or remedy any act, omission, circumstance, practice, tradition, culture, usage or custom that is found to constitute discrimination, marginalization or which otherwise undermines equal opportunities through mediation, conciliation, negotiation, settlement or other dispute resolution mechanism.

3. Subject to subsection (3) the Commission may hear and determine complaints by any person against any action, practice, usage, plan, policy programme, tradition, culture or custom followed by any organ, body, business organization, institution or person which amounts to discrimination, marginalization or undermines equal opportunities.

POWERS OF THE COMMISSION

1. In the performance of its functions under this Act, the Commission shall have the powers of a court to:

1. Require the attendance before the Commission of any person;
2. Require the production of any books, papers or documents;
3. inspect any books, papers, materials or documents produced before it or otherwise and;
 1. Retain any such books, papers, materials, oWr documents for such reasonable period as the Commission deem fit;
 2. Make copies of any of them, or their contents;



A Ugandan Police Officer lowers the National Flag at the EOC's Headquarters

4. Require any person to make oath or affirmation to answer truthfully all questions put by members of the Commission relating to any matter being inquired into by the Commission;
 5. Require any person appearing before the Commission, including the person whose conduct is subject to an inquiry, whether summoned to appear or not, to answer any question put by any member of the Commission, or by any other person appearing before the Commission.
2. Subject to subsection (3), where a person:
 1. Who has been served with a summons to attend before the Commission fails without reasonable excuse to attend in obedience to the summons; or
 2. Who has been served with a summons to produce any books, papers, materials or documents fails without reasonable excuse to comply with the summons;
 3. Misbehaves before the Commission, willfully insults the Commission or a member of the Commission, or interrupts the proceedings of the Commission;
 4. Refuses to be sworn or to affirm or to answer a question when required to do so by the Commission, that person commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred currency points or imprisonment not exceeding nine months or both.
 3. In the course of its proceedings, the Commission may:
 1. Receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper; or
 2. Adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.
 5. The Commission may, in writing, delegate to a member of the Commission any of its powers or functions under this Act other than this power of delegation.
 6. The Commission shall not investigate:
 1. Any matter which is pending before a court or judicial tribunal or is under investigation by another constitutional commission.
 2. A matter involving the relations or dealings between the Government of Uganda and the government of any foreign state or international organization;
 3. A matter relating to the exercise of the prerogative of mercy; or.
 4. Any matter involving behaviour which is considered to be:
 5. Immoral and socially harmful, or
 6. Unacceptable, by the majority of the cultural and social communities in Uganda.
 7. In the performance of its functions, the Commission:
 1. May establish its operational guidelines and rules of procedure;
 2. May request the assistance of any department, bureau, office, agency or person in the performance of its functions; and
 3. Shall observe the rules of natural justice.



EOC Commissioner Hajat Zaminah welcomes NGEN Commissioners and CEO at the Kampala Head Office

STRUCTURE OF THE COMMISSION

THE COMMISSION

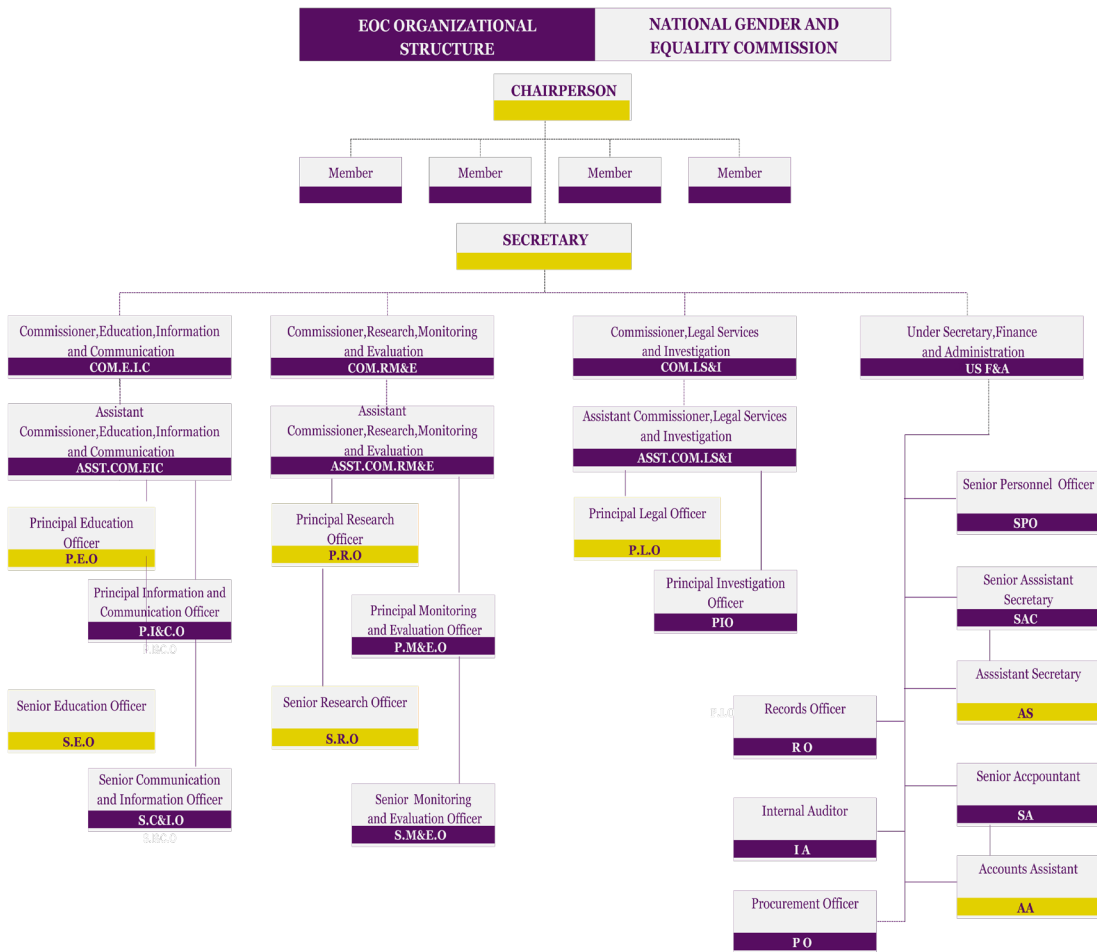
The governing body of the EOC is the Commission, which is composed of a Chairperson, a Deputy Chairperson and three other members appointed by the President, with the approval of Parliament. They serve for a period of five years and are eligible for re-appointment once.

THE SECRETARY TO THE COMMISSION

The Commission also has a Secretary to the Commission who is the Accounting Officer and in charge of overseeing the day-to-day running of the Commission, heads the management team and is the Secretary to Commission meetings.

The office of the Secretary is also charged with overseeing the public affairs, planning and editorial functions of the Commission.

EOC ORGANIZATIONAL STRUCTURE



EOC SUPPORT SERVICE STAFF INCLUDES

- ◆ Senior personal secretaries
- ◆ Personal secretaries
- ◆ Office attendants
- ◆ Drivers

MAKING GRB ACCOUNTABLE: THE UGANDAN MODEL



From Left: Commission Secretary Betty Nyabuto, Chairperson Joyce Mutinda, Commissioner Hajat Zaminah and Legal Officer brief the Media on the Benchmarking Visit

In the period 1962-2003, planning and budgeting in Uganda underwent several reforms with a view to achieve budgetary efficiency, transparency, accountability and value for money in Public Expenditure Management⁴

While significant achievements were registered with the various reforms and enacted laws, there was little progress made in ensuring compliance with issues of Gender and Equity in plans and budgets. In 2004, GoU through MoFPED in an attempt to make MDAs and LGs address gender issues developed a gender budget directive in the Budget Call Circular (BCC) that demanded all the MDAs and LGs to show how they will address gender issues through their budgets.

However, the directive did not address the Gender and Equity concerns effectively.

On From Left: Commission Secretary Betty Nyabuto, Chairperson Joyce Mutinda, Commissioner Hajat Zaminah and Legal Officer brief the Media on the Benchmarking Visit .

4th April 2007, His Excellency Yoweri Kaguta Museveni, President of the Republic of Uganda assented to the law establishing the Equal Opportunities Commission and on 8th July 2010 the Commission was inaugurated. The EOC's mandate spelt out in the EOC Act, 2007, gave the Commission Members at the time the impetus to join advocacy groups for ensuring gender and equity planning and budgeting in Uganda.

The increased advocacy and support from Civil Society, Parliament and the Public among other advocates, it was found necessary to incorporate the Gender and Equity Certificate into legislation for its enforcement. The Public Finance Management Bill was found a suitable Law to have sections on ensuring gender and equity planning and budgeting. Consequently, the Public Finance Management Act was assented to on the 23rd February 2015 by His Excellency Yoweri Kaguta Museveni, President of the Republic of Uganda with three provisions on Gender and Equity.

The law mandates the Minister responsible for Finance to issue a certificate, certifying that the budget framework paper is Gender and Equity responsive; and specifying measures taken to equalize opportunities for women, men, Persons with Disabilities and other marginalized groups in consultation with the Equal Opportunities Commission.

SECTIONS ON GENDER & EQUITY CERTIFICATE

Gender and Equity responsiveness recognizes that gender imbalances exist in all spheres of life and can be influenced through government policy interventions.

⁴ (Equal Opportunities Commission, 2019)

There are three Sections on gender and equity in the Public Finance Management Act, 2015. These are: Section 9 (6) (a) and (b); Section 13 (11) e (i) and (ii); and Section 13 (15) g (i) & (ii).

GENDER AND EQUITY BUDGETING TOOLS

1. Sector Specific Gender and Equity Tracking tools
2. GEB Guidelines for Sectors and MDAs. These constitute part of the BCC.
3. GEB Assessment Tools (Sector BFP tools, MPS tool and the LG tool).
4. Assessors Guide
5. Sector specific Gender and Equity Compacts
6. National Compendium on sector specific G&E issues;
7. The Gender and Equity Aware Statement
8. G&E simplified messages showing day to practical application of GEB
9. Capacity Development Plan
10. Gender and Equity curriculum and training manuals

LESSONS LEARNT

1. Making GRB a mandatory legal requirement enhances commitment to compliance
2. Simplification of G&E issues and Capacity building changes attitudes towards gender and equity planning and budgeting
3. Advocacy for G&E requires availability of authentic evidence.

RECOMMENDATIONS

1. There is need to integrate gender and equity variables in the design, implementation and management of; the Fiscal Policy and Macro Economics Models.
2. Kenya should consider making gender and equity responsive planning and budgeting mandatory and part of the Law that governs budget expenditure.

HANDLING COMPLAINTS AT THE EOC



NGEC & EOC Commissioners listen to presentations

One of the functions of the Equal Opportunities Commission as outlined in S. 23 of the Equal Opportunities Commission Act 2007 is to receive, investigate and, as far as possible, conciliate allegations of discrimination. To do the Commission relies on its legal services department to execute this mandate⁵.

The department of Legal Services and Investigations (LS&I) is charged with receiving, assessment and investigation of complaints, preparing complaints for tribunal hearings, conducting pre-tribunal sessions, conducting ADR sessions, that is, Arbitration, Reconciliation, & Mediation, monitoring Government of Uganda compliance with International and Regional Obligations with equal opportunities and making recommendations on issues to promote equal opportunities, provision of legal advice to the Commission and conducting legal and human rights research.

The roles of Legal Services & Investigation department are derived from the functions of the Commission under section 14(1) and (2(a), (b), (g), (h) and (3) & (4) of the Equal Opportunities Commission Act 2007. Broadly the department is charged with;

Receipt and registration of complaints concerning violation of equal opportunities.

1. Assessment of complaints for admissibility and viability of evidence, including writing relevant correspondences to the complainants and respondents
2. Initiating and spearheading investigations into equal opportunities violations
3. Advising the commission on legal complaints and appeals.
4. Advising the commission on legal issues pertaining to its operation as an institution.
5. Organizing Tribunal Sessions.
6. Organizing /facilitating Alternative Dispute Resolution sessions.
7. Giving legal advice to the public concerning equal opportunities.
8. Mobilizing legal aid services and establishing mechanisms for their accessibility by vulnerable groups through referrals.
9. Defending the Commission in liaison with the office of the AG against any suit.
10. Assessment of Laws, Bills and policies to ascertain their compliance with equal opportunities in accordance with international instruments to which Uganda is a State Party.

THE COMPLAINTS HANDLING TRIBUNAL

The EOC Tribunal and matters concerning its operations are provided for under Sections 23 -31 of the Equal Opportunities Act, 2007. These sections provide as follows:

Section 23:

Lodging Complaints

1. A person may lodge a complaint relating to discrimination, marginalization or any act which undermines or impairs equal opportunities with the Commission.

⁵ (Equal Opportunities Commission Uganda, 2019)

2. A complaint made under subsection (1) shall be in writing and signed by the complainant or complainants.
3. The Commission shall consider or hear the complaint within six months after receipt of the complaint.

Representation by Counsel

A person appearing before the Commission may be represented by a legal counsel at his or her own expense.

Section 27:

Immunity of Witness

A witness appearing before the Commission shall have the same immunities and privileges as if he or she were a witness before a court of law.

Section 28:

Witness Allowance

1. Any person summoned to appear before the Commission as a witness is entitled to be paid by way of reimbursement of his or her expenses, such allowance as is payable to a witness appearing before the High Court in criminal proceedings.
2. Any other person invited by the Commission to attend any meeting of the Commission to assist the Commission may be paid by the Commission such allowances as the Commission may consider reasonable.

Section 29:

Appeals

1. Any person aggrieved by a settlement, recommendation or an order of the Commission may subject to this Act, appeal to the High Court within thirty days after the settlement, recommendation or order of the Commission is communicated to him or her.
2. The Chief Justice shall make rules of court for regulating appeals under this section.

Section 30:

Application Of Court Rules

Where the rules of procedure of the Commission do not provide for a particular matter before the Commission, rules applicable to civil or criminal proceedings in a court of law may be applied by the Commission with such modifications as may be necessary.

Section 31:

Offences Relating to Administration of the Act

A person shall not hinder, obstruct, molest or interfere with -

- a. A member participating in an inquiry or examination under this Act; or
 - b. A person acting on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act;
 - c. A person implementing an order of the Commission.
2. A person, who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment for a term not exceeding eighteen months, or both.
3. A person who;
- a. Refuses to employ another person;
 - b. Dismisses or threatens to prejudice another person in that other person's employment; or
 - c. Intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to another person, by reason that the other person -
 - i. Has made, or proposes to make a complaint to the Commission
 - ii. Has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to this Act or impairs equal opportunities;
 - iii. Has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting on behalf of the Commission; or
 - iv. Has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission,
 - d. contravenes or refuses to implement any order, or settlement made by the Commission, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or imprisonment for a term not exceeding eighteen months, or both.

LESSONS LEARNT

1. Section 27 of the National Gender and Equality Commission Act No. 15 of 2011 gives the Commission the powers of a court similar to those of the Equal Opportunities Commission of Uganda. NGEC has a solid legal backing to conduct tribunals and render binding rulings.
2. The EOC has succeeded in exercising its powers of a Court more robustly and with resounding success. NGEC has an opportunity to replicate the tribunal model with much ease considering the fact the Commission has five regional offices across the country with conducive venues to hold tribunals.
3. The gazettelement and operationalization of the NGEC rules and regulations, should be fast tracked for they provide clarity in the conduct of the Commission's activities.
4. There is need to build capacity of legal human resource as well as make deliberate efforts to program and plan for the conduct of tribunals by the legal department.

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